UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

)	
UNITED STATES OF AMERICA,)	
Complainant,)	8 U.S.C. § 1324a Proceeding
)	
V.)	OCAHO Case No. 20A00016
)	
WINDBREAKER RESTAURANT AT)	Judge Robert L. Barton, Jr.
LONG BEACH, INC.)	
D/B/A MIMMO'S ITALIAN RESTAURANT,)	
Respondent.)	
)	

ORDER DISMISSING PROCEEDING

(November 23, 1999)

On October 15, 1999, Complainant filed a complaint against Respondent with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent violated 8 U.S.C. § 1324a(a)(1)(B) when it hired ten (10) individuals without complying with the employment eligibility verification procedures set forth at 8 U.S.C. § 1324a(b). See C's Compl. at 2. Complainant requested in its complaint that the OCAHO impose a civil money penalty against Respondent in the amount of \$1,750 and impose whatever other relief the court found appropriate. Id.

On November 17, 1999, Complainant filed a motion to dismiss. According to the motion, Respondent replied to the complaint not by filing a formal answer, but rather by sending Immigration and Naturalization Service Assistant District Counsel John M. Furlong, Jr., a handwritten note in which it expressed its desire to avoid a hearing. See C's Mot. to Dismiss at 1. Attached to this letter was a check from Respondent in the amount of \$1,925, made payable to the United States Department of Justice. Id. Moreover, according to the motion, Mr. Furlong telephoned Respondent's representative on November 15, 1999, and confirmed that Respondent (1) desired that the action be dismissed, and (2) understood its payment of \$1,925 to constitute a full settlement of the action. Id. Because there is no formal, written settlement agreement between the parties, Complainant moves to dismiss this case pursuant to 28 C.F.R. § 68.14(a)(2).

The OCAHO Rules of Practice and Procedure provide that when parties or their authorized representatives enter into a proposed settlement agreement, they may either (1) submit to the Judge a proposed agreement containing consent findings and a proposed decision and order, or (2) notify the Judge that the parties have reached a full settlement and have agreed to the dismissal of the action.

28 C.F.R. § 68.14(a) (1999). Dismissal of the action shall be subject to the Judge's approval, who may require the filing of a settlement agreement. <u>Id</u>.

In this case, the parties have not submitted consent findings. Moreover, Complainant's counsel has informed the Court that no written settlement agreement was entered into by the parties. However, the parties appear to have reached a full settlement and have agreed to dismissal of the action. Therefore, pursuant to 28 C.F.R. § 68.14(a)(2), the Complainant's motion to dismiss is granted, and this case is dismissed with prejudice.

It is so ordered.

ROBERT L. BARTON, JR. ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 1999, I have served the foregoing Order Dismissing Proceeding on the following persons at the addresses shown, by first class mail, unless otherwise noted:

John M. Furlong, Jr.
Assistant District Counsel
Immigration and Naturalization Service
P.O. Box 8728
Boston, MA 02214
(Counsel for Complainant)

Diana Hickey Windbreaker Restaurant at Long Beach, Inc. d/b/a Mimmo's Italian Restaurant P.O. Box 1846 York Beach, ME 03910 (Respondent)

Dea Carpenter Associate General Counsel Immigration and Naturalization Service 425 "I" Street, N.W., Room 6100 Washington, D.C. 20536

Office of the Chief Administrative Hearing Officer Skyline Tower Building 5107 Leesburg Pike, Suite 2519 Falls Church, VA 22041 (Hand Delivered)

Linda Hudecz

Paralegal Specialist to Robert L. Barton, Jr. Administrative Law Judge
Office of the Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 1905
Falls Church, VA 22041
Telephone No.: (703) 305-1739

FAX NO.: (703) 305-1515